

Bryan W. Shaw, Ph.D., *Chairman*
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Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 14, 2012

Lynda Hall, Chief
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 4503T
Washington, DC 20460

VIA EMAIL: 319grants@epa.gov

Re: Revised Nonpoint Source (NPS) Program and Grants Guidelines for States and Territories

Dear Ms. Hall:

The Texas Commission on Environmental Quality (TCEQ) is providing comments on the draft Revised Nonpoint Source (NPS) Program and Grants Guidelines for States and Territories.

The TCEQ is pleased to submit comments on the draft guidance and looks forward to continuing to work with USEPA on the development of the program guidelines. The TCEQ urges the EPA to reconsider restricting the funding of watershed-based plans for "NPS program funds" to allow states the ability to develop these essential plans without impacting the ability of states with Performance Partnership Grants to have sufficient funding to successfully administer the NPS program. More details and additional comments are enclosed.

If you have comments or questions concerning the enclosed comments, please contact Kelly Holligan of my staff by telephone at 512/239-2369, or by e-mail at kelly.holligan@tceq.tx.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Zak Covar", written over a horizontal line.

Zak Covar
Executive Director

Enclosure

TCEQ Comments on USEPA's Revised Nonpoint Source Program and Grants Guidelines for States and Territories

I. Summary of Proposed Action

The United States Environmental Protection Agency (USEPA) recently revised its guidelines to states for the award of Clean Water Act (CWA) §319 grants, as well as for the implementation of nonpoint source (NPS) management programs. The USEPA released the draft guidelines for public comment on November 8, 2012. Comments are due on December 14, 2012. The draft guidelines, which would replace the existing 2004 guidelines, place an increased emphasis on watershed project implementation in watersheds with impaired waters, and increased accountability measures.

The *Texas NPS Management Program* is jointly administered by the Texas Commission on Environmental Quality (TCEQ) and the Texas State Soil and Water Conservation Board (TSSWCB). Funds received under CWA § 319(h) are split equally between the two agencies. Each agency independently administers the portions of the *Management Program* within their statutory jurisdiction, and their portion of the CWA § 319(h) grant.

II. Comments

Comment 1 (Section VIII.A Activities Eligible for Funding Under §319):

Changes to the current funding structure could significantly impact the ability of states to administer their NPS programs. The TCEQ utilizes the Performance Partnership Grant (PPG) and subsequent Performance Partnership Agreements (PPAs) to appropriate funds to manage and support the §319 program. The PPG is currently funded by the 50% of §319 funds called "base funding," which under the proposed guidelines will be "NPS program funds." The remaining 50% of §319 funds are referred to as "incremental funding." Currently the TCEQ has the flexibility to utilize 20% or more of the base funds and to use 20% of the incremental funds to develop watershed-based plans. The development of watershed-based plans is necessary to establish the plan for implementation activities. Under the draft guidance 50% of §319 funding would be restricted to "watershed project funds" and therefore must be used to implement watershed-based plans. It appears that under the draft guidance the PPG funding must come from "NPS program funds" which are the only §319 monies allowed to fund the development of watershed-based plans. This approach reduces the flexibility of use of PPG funds, a goal for establishing the PPG framework. This approach would also impact the development of plans which establish the basis for implementation. The TCEQ requests that USEPA reconsider restricting the funding of watershed-based plans from only "NPS program funds" to allow states the ability to develop these essential plans without impacting the ability of states with PPGs to have sufficient funding to successfully administer the §319 program.

Comment 2 (Section IX.C. Nonpoint Source Program Funds):

The draft guidelines state “Under these guidelines all planning activities funded by §319, including the development of WBPs and TMDLs, must be conducted using NPS program funds.” The TCEQ utilizes the PPG and subsequent PPAs to appropriate funds to manage the §319 program and internal programs that support §319 program activities. The PPG has been funded from “base funding,” which under the proposed guidelines will be “NPS program funds.” Requiring 50% of §319 funding to be directed only towards the implementation of watershed-based plans does not provide the TCEQ the flexibility to utilize 20% or more of these funds to develop watershed-based plans. Furthermore, if in the future, §319 funding is cut at the federal or regional level, reductions could have the potential to impact TCEQ programs that receive §319 funds via the PPG and PPAs, thereby reducing the state’s ability to successfully implement the program. The TCEQ requests the USEPA reconsider requiring 50% of the §319 funding to be directed only towards the implementation of watershed-based plans.

Comment 3 (Section IX.B.ii. Alternatives to Nine-Element Watershed-based Plans):

It is the understanding of TCEQ that one purpose of this guidance revision was to provide flexibility to states for implementing alternate watershed-based plans. The draft guidance states that regions will “review and *approve* all alternative plans proposed for implementation in the state’s §319 grant work plan,” (*emphasis added*). In the Texas Total Maximum Daily Load (TMDL) Program, implementation plans (I-Plans) are documents developed separately from the TMDL document and are not approved by the USEPA. It appears the revised guidance, as drafted, may preclude the funding of TMDL I-Plans developed by the Texas TMDL Program and similar TMDL programs. TMDL I-Plans are a viable mechanism for achieving water quality improvements and account for the majority of success stories in Texas. Therefore, the TMDL together with the I-Plan should serve as a watershed-based plan suitable for §319 funding. However, in those cases where state TMDL I-Plans are not subject to USEPA approval, only the information that is applicable to the grant §319 work plan project should be reviewed by USEPA. TCEQ strongly encourages USEPA to revise the draft guidance to address the situation where states seek to fund TMDL implementation activities with §319 watershed project funds as an alternative to Nine-Element Watershed-based Plans.

Comment 4 (Section VIII.H. Relationship to PPGs):

Although PPGs are intended to reduce administrative costs by streamlining paperwork and accounting procedures, some enhanced reporting requirements, such as those suggested in the proposed guidance text, have the potential to increase administrative costs through additional reporting requirements. The TCEQ is concerned with the following text from the proposed guidance: “States are required to submit work plans, annual reports, and *to provide reporting under the Grant Reporting and Tracking System (GRTS)* at the level of detail to ensure that EPA regions can measure and track outcomes and outputs to ensure accountability,” (*emphasis added*). Based on Grant Policy Issuance (GPI) 11-03 the NPS Program uploads Work Plans and Progress Reports into the State Grant IT Application (SGITA). The GRTS reporting, which would be

required under the draft guidelines, appears to result in duplicate reporting unless the GRTS reporting replaces the need to upload Work Plans and Progress Reports into SGITA. Please clarify the expected reporting activities and identify which elements the PPGs (NPS program funds) will be reporting in GRTS. The TCEQ strongly encourages USEPA not to require additional information on state programs outside of what is already required through GRTS nationally mandated elements.

Comment 5 (Section VIII.D. CZARA Implementation):

TCEQ seeks clarification on EPA's use of the term "expired conditional approvals" in its discussion of coastal nonpoint pollution control programs. The draft guidance states "For states with *expired* conditional approvals of their coastal nonpoint pollution control program, these guidelines specify that states set-aside at least \$100,000 in §319 funds annually to complete the development of these programs," (*emphasis added*). Section 6217 of the Coastal Zone Reauthorization Amendments of 1990 (CZARA) required states with Coastal Management Plans to address coastal nonpoint source pollution impacting coastal waters. States were tasked with developing Coastal Nonpoint Source Pollution Control Programs to provide for the implementation of measures to restore and protect coastal waters from various sources of pollution. Texas submitted the *Texas Coastal Nonpoint Source Pollution Control Program* to USEPA and the National Ocean and Atmospheric Administration (NOAA) in December 1998. The USEPA and NOAA conditionally approved the *Texas Coastal Nonpoint Source Pollution Control Program* in July 2003. Texas continued to seek full approval by addressing the six outstanding conditions identified by the USEPA and NOAA. The state responded to the conditional approval findings of USEPA and NOAA with the expectation that the response would result in a fully-approved program. However, in May 2009, the state received additional comments from USEPA and NOAA. At that time only one of the six conditions was lifted. The state continues to address the conditions identified by USEPA and NOAA to obtain full approval. Given that Texas's conditional approval is not "expired", is the state still required to set aside \$100,000 in §319 funds to address outstanding conditions of its Coastal Management Plans?

Comment 6 (Section IX.J. CZARA Set-Aside):

The TCEQ seeks clarification from EPA on the spending requirements cited in the draft guidance related to the development of an approvable coastal nonpoint pollution control program. The State of Texas has conditional approval of its coastal NPS program. In addressing an outstanding management measure, "Inspect Onsite Disposal Systems (OSDS) at a frequency adequate to ascertain whether OSDSs are failing," the TCEQ has committed to applying \$300,000 of §319 funds over a three-year period through two separate grant work plan projects titled "CZARA On-site Sewage Facility Training, Reconnaissance, and Replacement" (phases one and two). Both projects are part of separate three-year work plans. The draft guidance appears to require states that appropriate §319 funds via a three-year work plan to spend \$100,000 annually rather than commit the funds over the project period of the grant award. TCEQ requests that USEPA revise the draft guidance to clarify that funds appropriated to develop the coastal nonpoint pollution control program can be spent over the term of the grant

rather than a specific amount allocated annually. This will provide the necessary flexibility since in most construction or implementation projects, the majority of funding is not spent until the second or third year of the project, when plans and designs are approved and construction can begin.

The draft guidance states “EPA shall consider this set-aside separately prior to determining the split between the watershed project funds and the NPS program funds; that is, the set-aside is not subject to the split between watershed implementation and program implementation.” Please revise the draft guidance to clarify this statement. In the situation where a state appropriates more than the required \$100,000 for CZARA, the guidance is unclear whether the full federal amount of the project is considered part of the annual set-asides and therefore not subject to the split between funds. Also, please clarify whether the “not subject to the split” can be negotiated for a possible waiver from the regional project officer.

Comment 7 (Section IX.K.iii. Annual Reports):

The second bullet in this section references “matrix displaying milestones” and then lists “Leveraged funds.” Is this specific milestone meant to identify the source of the non-federal match, other federal programs [such as Clean Water State Revolving Fund (CWSRF)], or other state programs and agencies contributing assistance to the project(s)?

Comment 8 (Section IX.K.vi. STORET):

The draft guidance would require states to enter data into STORET. The TCEQ requests USEPA develop specific guidance on inputting NPS §319 data into STORET, since the current guidance predominately addresses 305(b) monitoring data. TCEQ also requests USEPA provide training on inputting non-ambient, non-traditional (i.e. not fixed in stream/reservoir monitoring station network sites) data into the WQX schema.